

RESOLUTION NO. 5684-23

A RESOLUTION APPROVING A LOAN AGREEMENT WITH CPAH PLAMBECK LIMITED PARTNERSHIP

WHEREAS, CPAH Plambeck Limited Partnership (Borrower) is developing a 116-unit multi-family affordable housing development known as Plambeck Garden Apartments; and

WHEREAS, the City of Tualatin is the recipient of American Rescue Plan Act (ARPA) State and Local Fiscal Recovery Funds (SLFRF), which allow for an award or loan of funds to subrecipients who meet ARPA/SLFRF eligibility requirements, including but not limited to, affordable housing projects and infrastructure improvements; and

WHEREAS, as part of the conditional approval of Borrower’s development application, the Borrower is required to construct a 12-inch diameter water main to the public water system (Project); and

WHEREAS, the City has determined that it is in the best interest of the City to loan Borrower up to \$1,000,000 of the City’s ARPA/SLFRF funds to construct the Project.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF TUALATIN, that:

Section 1. The Project meets the eligibility requirement for use of ARPA/SLFRF funds.

Section 2. The City Council authorizes the City Manager, or the City Manager’s designee to enter into a Loan Agreement in substantially the same form as the attached Exhibit A and to take all administrative steps, including but not limited to entering into other agreements as necessary, to effectuate the Loan Agreement. .

Section 3. The City reserves the right, in its sole discretion, to forgive the indebtedness set forth under the Loan Agreement if requested by Borrower.

Section 5. This resolution is effective upon adoption.

ADOPTED by the City Council this 10th day of April, 2023.

CITY OF TUALATIN, OREGON

BY _____
Mayor

ATTEST:

BY _____
City Recorder

APPROVED AS TO FORM

BY _____
City Attorney

Exhibit A

LOAN AGREEMENT

THIS LOAN AGREEMENT (“Loan Agreement”) is made this May 2, 2023 by and between CPAH Plambeck Limited Partnership, an Oregon limited partnership (“Borrower”) and the City of Tualatin, an Oregon municipal corporation (Lender or City).

RECITALS

A. On March 11, 2021 the American Rescue Plan Act (ARPA) was signed into law and established the Coronavirus Local Fiscal Recovery Fund together which make up the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program. The SLFRF program is to provide support to state, territorial, local, and tribal governments in responding to economic and public health impacts of COVID-19 and their efforts to contain impacts on their communities, residents, and businesses.

B. The City is the recipient of ARPA/SLFRF funds and may award or loan funds to subrecipients who meet ARPA/SLFRF eligibility requirements including but not limited to affordable housing projects and infrastructure improvements.

C. Borrower is the owner of that certain property located at 23500 and 23550 SW Boones Ferry Road in the City of Tualatin, (the “**Property**”).

D. On June 8, 2022, the City conditionally approved Borrower’s Development Application (AR 22-0001) to develop the Property into a 116-unit multi-family affordable housing development known as Plambeck Garden Apartments (“Development”).

E. Borrower will finance the Development in part with private activity bonds issued by the State of Oregon through its Housing and Community Services department and equity generated from low-income housing tax credits.

F. City has agreed to loan borrower One Million Dollars (\$1,000,000) of City’s ARPA/SLFRF funds to be used for the Development and more specifically the construction of a c-level public water system from the intersection of SW Boones Ferry Road and SW Norwood Road to the south property line of this Development with a 12-inch diameter main to meet public water system requirements of the MurraySmith Technical Memorandum dated November 2, 2021 and included as Exhibit A (“Project”).

G. City finds that the fulfillment of this Agreement and the completion of the Project, are in the best interests of the City and the health, safety, and welfare of its residents, and are in accordance with the public purposes and provisions of the applicable state and federal laws and requirements.

H. Subject to the terms and conditions set forth herein and in the Loan Documents, Lender will provide Borrower the Loan (as hereinafter defined) for the purpose of constructing the Project.

Therefore, the parties agree as follows:

1. DEFINITIONS

City means the City of Tualatin, a municipal corporation of the State of Oregon.

Construction Documents means the plans and specifications for the Project, the Bid, the construction contract, any design professional agreements for the Project, and any other documents relating to the design or construction, or construction management of the Project, all as approved in writing by Lender as provided herein.

Construction Period means the period beginning on the date this Agreement is executed and ending on final completion of the Project as defined in the Construction Documents but in no event shall the Project be completed later than December 31, 2026.

Eligible Work means work that is eligible for funding that is part of the Project and included in the Bid.

Eligible Project Costs means costs that are directly related to Eligible Work as stated on the Construction Contract or, if no construction contract is in place, on the construction Bid documents.

Fiscal Year means the period beginning on the first day of July of each year and ending on the last day of June the following year.

Loan means the loan from Lender described in Section 2.1 of this Loan Agreement.

Loan Documents mean this Loan Agreement, the Note, the Trust Deed, and any other agreement, addendum, or amendment executed by Borrower and Lender in connection with the Loan.

Loan Period means the period beginning on the date of the first disbursement under this Loan Agreement and continuing until the loan and all accrued interest is fully repaid which in no event should be later than June 30, 2080.

Note means that certain Promissory Note dated **May 2, 2023**, and executed by Borrower in favor of Lender and evidencing the Loan, attached hereto as Exhibit B.

Project shall have the meaning as described above.

Trust Deed means that certain Line of Credit Trust Deed, Security Agreement, Fixture Filing, and Assignment of Leases and Rents dated May 2, 2023, executed by Borrower, as Grantor, in favor of Lender, as Beneficiary, encumbering the Project and securing the Loan, attached hereto as **Exhibit C**.

2. LOAN AND PROJECT FUNDING

2.1 **Loan Amount, Security.** Subject to the terms and conditions of this Loan Agreement, Lender agrees to make a loan to Borrower ("**Loan**") in the maximum principal amount of one million

dollars (\$1,000,000.00) ("**Loan Amount**"). The Loan is evidenced by and repayable in accordance with this Loan Agreement, and Note, and is secured by the Trust Deed. All payments and prepayments on the Loan and all other amounts payable hereunder or under the Trust Deed by Borrower to Lender shall be made to:

City of Tualatin
Attn: Finance Department
18880 SW Martinazzi Avenue
Tualatin, OR 97062-7092

or at such other address as Lender may specify in writing.

2.2 Use of Loan proceeds is restricted to Eligible Project Costs. Any Eligible Project Costs above one million dollars (\$1,000,000.00) are the Borrower's sole responsibility.

3. LOAN TERMS

3.1 **Loan.** Lender agrees, on the terms and conditions of this Loan Agreement and upon satisfaction of any conditions precedent, to disburse a total aggregate principal amount equal to the Loan Amount.

3.2 **Interest.** Interest shall accrue at a compound interest rate of zero percent (0%).

3.3 **Documentation Required for Disbursements.** Borrower may request the initial disbursement in accordance herewith by providing Lender with copies of executed and approved, Loan Agreement, Promissory Note and proof of Trust Deed filed with the City of Tualatin Recorder. Thereafter, Borrower shall make a written Drawdown Request to the Lender. Drawdown Requests shall include copies of invoices for completed or work to be completed. Lender shall fund each Drawdown Request no later than thirty (30) days after receipt of a Drawdown Request; provided, however, that the maximum amount of drawdowns collectively under this Note is One Million Dollars (\$1,000,000.00).

3.4 **Payments.** Repayment Due on Sale or Transfer, as set forth below.

(a) Loan payments shall be made in accordance with the terms described in the Note.

(b) Any sale, transfer, conveyance, bequest or gift of the Property shall require written notification to Lender prior to closing and funding the transaction, at which time the Loan and any accrued interest will become immediately due and payable at Lender's sole option.

3.5 **Covenants of Borrower.** Borrower covenants as follows with respect to the construction of the Project, unless Lender has waived compliance in writing. Continuous and full compliance with each covenant below is a condition precedent to Lender's obligation to disburse loan funds:

(a) Each of Borrower's representations and warranties contained in the Loan Agreement and other Loan Documents are true and correct in all respects.

(b) No default has occurred or is continuing under this Loan Agreement or any other Loan Document, and no event shall have occurred that, with the giving of notice or passage of time or both, would constitute a default.

(c) Borrower has provided to Lender, at Borrower's expense, an extended lender's policy of title insurance insuring the lien of the Trust Deed, subject only to Permitted Exceptions (as defined in the Trust Deed).

(d) There has been no condemnation, casualty, or catastrophe affecting the security value of the Project that is not being remedied.

(e) Lender will receive copies of lien waivers, in form and substance reasonably satisfactory to Lender, from the general contractor and all subcontractors who worked on the Project indicating that they have been paid for all work performed, or the applicable construction lien period shall have expired (without any liens having been filed), or Borrower will obtain, at its option and expense, a title policy in a form acceptable to Lender, insuring the lien of the Trust Deed against all construction liens that have been or may be filed against the Project.

(f) A completion notice will be posted in accordance with ORS 87.045 and Lender may inspect (unless it waives inspection in its sole discretion) the Project to determine that it was completed in accordance with the Construction Documents and other applicable requirements.

(g) All governmental approvals, licenses, or permits necessary for the use and/or occupancy of the Project shall be obtained.

(h) Lender will receive from Borrower all required regulatory reporting forms as applicable to the Project in form and substance reasonably acceptable to Lender and such supporting documentation as Lender may request.

(i) Borrower has or will commence work within thirty (30) days after the date of this Loan Agreement, unless Lender consents in writing to a longer period. All work will be done under and in accordance with building and other applicable permits issued by the City of Tualatin.

(j) Borrower will comply at its sole cost with any applicable laws related to competitive bidding, payment of wages, and working conditions on the Project, and will indemnify and hold Lender harmless from any violations related to such laws.

(k) The Project will be constructed in a good, workmanlike, expeditious, and continuous manner. The Project shall be completed in accordance with the Construction Documents, as evidenced by the written certification of the Project design professional and contractor in form and substance satisfactory to Lender, no later than the end of the Construction Period.

(l) All Construction Documents will be approved by Lender in writing and shall not be modified subsequent thereto in any material respect without Lender's prior written approval, which shall not be unreasonably withheld, conditioned or delayed.

(m) Lender and its agents and representatives have the right at any reasonable time to inspect the Project, and inspect financial documentation pertaining to the Project to insure compliance with the terms of the Loan, and to verify that construction is progressing in compliance with the Lender-approved disbursement schedule; provided, however, such inspection by Lender is solely for the purpose of protecting Lender's rights and interests, and shall under no circumstances impose any liability on Lender or result in a waiver of any default of Borrower or be a representation that Borrower is or will be in compliance with the Construction Documents or other applicable laws or requirements.

(n) All funds disbursed hereunder will be used by Borrower for such purposes relating to construction of the Project as shown in Construction Documents. Borrower will not loan or otherwise make available all or any part of the Loan proceeds to any person or entity without the prior written consent of Lender.

(o) Borrower agrees to provide to Lender upon Lender's request supporting documentation of all costs incurred by Borrower on the Project whether or not such costs are paid from Loan proceeds.

(p) All contractors and subcontractors on the Project shall be registered and bonded in accordance with Oregon law and shall be licensed by the City of Tualatin for construction work. Borrower covenants that all necessary permits, operating and business licenses required by the City of Tualatin, State of Oregon, and all other government agencies have been issued and copies will be provided to Lender upon request.

(q) Borrower covenants that there has been no material change in the Project financing as described in Recital E.

(r) Borrower covenants that if Borrower intends to vacate the Property or Project, Borrower will provide at least 30 days advance written notice to Lender. Borrower will remain fully obligated to perform under the Loan Documents in the event it vacates the Property or Project, and Lender reserves all of its rights to ensure and compel Borrower's performance if Borrower vacates the Property or Project, unless Lender in its sole discretion consents otherwise in writing.

(s) Borrower agrees to meet all federal compliance and reporting requirements for the use of ARPA/SLFRF funds and agrees to provide Lender with documentation of Project as requested by Lender to meet federal ARPA/SLFRF requirements.

(t) Borrower shall enter into and record against the Property a 4% Low-Income Housing Tax Credit Reservation and Extended Use Agreement with the State of Oregon, acting by and through its Housing and Community Services Department (the "REUA"), and shall operate the Development in accordance with the same. For the term of the REUA, and in no event for a term of less than 20 years, Borrower shall rent the residential units as specified in the REUA. Borrower agrees to repay any loaned funds to the Lender at the time the project becomes non-compliant, after any permitted cure period, including if such project ceases to satisfy the requirements to be a qualified low-income housing project (as defined in 26.U.S. Code section 42(g)) or a qualified residential rental project (as defined in 26 U.S. Code section 42(d)), or if such project fails to comply with any of the requirements

of the extended low-income housing commitment that are described in section 26 US Code section 42(h)(6)(B)(i)-(iv).

(u) Borrower agrees, as a condition for accepting the Loan, to waive any right to request a qualified contract (as defined in section 26 U.S. Code section 42(h)(6)(F)).

4. COLLATERAL

4.1 **Trust Deed; Security Interest in Personal Property Collateral.** To secure Borrower's prompt payment and performance of its obligations under this Loan Agreement and Note, Borrower shall grant Lender a lien on the Property and all improvements now or hereafter existing on the Property (including the Project) and a continuing security interest in personal property now or hereafter located on, relating to, or used in connection with the Property or the Project, as and to the extent provided in the Trust Deed.

4.2 **Personal Property Lien Perfection.** Borrower agrees that Lender has the right to file UCC financing statements, instruments, and documents, and Borrower agrees to take such other action as may be required to perfect or to continue the perfection of Lender's security interest in the collateral described in the Trust Deed.

5. BORROWER'S REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender as follows:

5.1 **Status.** Borrower is a limited partnership, duly organized and validly existing under the laws of the state of Oregon, that has the power and authority to enter into the Loan Documents.

5.2 **No Violations or Default.** Borrower is not in default under or in violation of any indenture or agreement to which it is a party or by which it is bound, or any order, regulation, ruling, or requirement of a court or other public body or authority. No creditor has given Borrower notice or threatened to give it any notice of default under any agreement or other obligation.

5.3 **Litigation.** No action, suit, investigation, or proceeding is pending against Borrower or with respect to the Project before any court or administrative agency, (a) the outcome of which, by itself or taken together with other such litigation, might have a material adverse effect on the business, assets, operations, or financial condition of Borrower, or (b) which purports to affect the legality, enforceability, or validity of any Loan Document.

5.4 **Tax Returns and Taxes.** All federal, state, and other tax returns of Borrower required by law to be filed have been filed. All other taxes applicable to Borrower, including real property taxes (to the extent not abated in accordance with applicable law), are current.

5.5 **Title to Collateral.** All the collateral described in the Trust Deed is owned by Borrower, and Borrower's interest in such collateral is free and clear of all liens and encumbrances of any kind except those approved in writing by Lender ("**Permitted Exceptions**").

5.6 **Compliance With Laws.** Borrower is in material compliance with all federal, state and local laws, rules, regulations, ordinances and orders applicable to it, the Property or the Project, and the operation thereof, including, without limitation, all applicable health and safety, environmental, and zoning laws.

5.7 **Financial Statements.** All financial statements delivered by Borrower to Lender will, as of the date thereof, be true, correct and complete, fairly represent the financial condition of the Project at the dates thereof; and be prepared in accordance with generally accepted accounting principles and practices in the United States, consistently applied. Since the date of the most recent financial statements delivered to Lender, there has been no material adverse change in the financial condition of Borrower or Project.

6. AFFIRMATIVE COVENANTS

At all times during the term of this Loan Agreement and until all amounts and obligations owing hereunder and under any other Loan Document shall have been paid and performed, Borrower covenants and agrees as follows:

6.1 **Licenses; Maintenance of Business.** Borrower will keep in force all licenses and permits necessary to the proper conduct of its ownership and operation of the Development.

6.2 **Performance of Obligations.** Borrower will pay all principal of and interest on the Loan in accordance with the terms of the Note and this Loan Agreement, and will pay when due all other amounts payable by Borrower hereunder or under any Loan Document, and will comply with all requirements of the Trust Deed.

6.3 **Compliance with Laws and Use Restrictions.** Borrower will comply with, or cause the Project to comply with, all laws, ordinances, statutes, rules, regulations, orders, injunctions, or decrees of any government agency or instrumentality applicable to Borrower, the Project, or the operation thereof, including (a) all applicable health and safety, environmental, and zoning laws, and (b) all restrictions on the use, occupancy or operation of the Project arising from the original source of the Loan proceeds or otherwise required by Lender.

6.4 **Other Obligations.** Borrower will pay, and discharge before the same shall become delinquent, all indebtedness, taxes, and other obligations for which it is liable or to which its income or property is subject and all claims for labor and materials or supplies which, if unpaid, might become by law a lien (other than a Permitted Exception) upon the collateral described in the Trust Deed, except any thereof whose validity or amount is being contested in good faith by Borrower in appropriate proceedings with adequate provision having been made in accordance with generally accepted accounting principles for the payment thereof if the contest is determined adversely to Borrower. If Borrower fails to discharge any such claim or lien, Lender may, in its sole discretion and without waiving the default, pay the same, which payment shall, at Lender's option, be added to the amount outstanding under the Note with interest.

6.5 **Indemnity.** Borrower shall indemnify and hold Lender, its employees and agents harmless from and against any and all liabilities, claims, losses, damages, or expenses (including attorney fees and title costs and expenses) which any of them may suffer or incur in connection with (a) the inaccuracy of any of the representations and warranties made in this Loan Agreement, (b) any transaction

contemplated by this Loan Agreement or any other Loan Document, and (c) the construction, or operation of the Project, except to the extent such liabilities, claims, losses, damages, or expenses arise solely from the gross negligence or willful misconduct of Lender.

6.6 **Financial Information.** Borrower shall provide to Lender periodic financial statements meeting the requirements of Section 5.7 and other reports as reasonably requested by Lender, including copies of federal and state tax returns.

6.7 **Additional Documents; Additional Acts.** From time to time, Borrower will execute and deliver all such information, documents, or instruments and perform all such other acts as Lender may reasonably request to carry out the transactions contemplated by the Loan Documents.

7. NEGATIVE COVENANTS

At all times during the term of this Loan Agreement and until all amounts and obligations owing hereunder and under any other Loan Document shall have been paid and performed in full, Borrower will not, directly or indirectly, without the prior written consent of Lender:

7.1 **Ownership/Change in Control.** Sell or transfer any beneficial interest in Borrower in violation of the terms of the Note, or change or permit a material change in Borrower's legal organizational structure, except as provided in Sections 8.5 and 8.6 of the Trust Deed.

7.2 **Sale or Merger.** Sell or transfer all or any part of the Property or Project in violation of the terms of the Note, or dissolve, liquidate, merge, reorganize, or consolidate.

7.3 **Indebtedness.** Except as specifically contemplated in this Loan Agreement or agreed to in writing by the Lender, incur any new indebtedness in addition to the Loan or indebtedness upon Property secured by Permitted Exceptions.

7.4 **Liens.** Create, assume, or suffer to exist any lien or charge of any kind, direct or indirect, upon any of the Property or the Project, except for Permitted Exceptions and liens in favor of Lender, and liens that have been bonded against pursuant to Oregon law.

8. EVENTS OF DEFAULT

Any of the following shall be an event of default (“**Event of Default**”) under this Loan Agreement:

8.1 **Failure to Pay Obligations Under Note and Trust Deed When Due.** Borrower fails to pay any sum due under the Note within fifteen (15) days after the date it is due, or fails to pay any other amount required to be paid by Borrower pursuant to the Trust Deed or the Loan Documents (including, without limitation, taxes, assessments, insurance and any other payment necessary to prevent filing or imposition of any liens) within fifteen (15) days after written notice of nonpayment from Lender specifying the default.

8.2 **Failure to Comply with Covenants.** Borrower fails to perform or abide by any other covenant in this Loan Agreement or in the Loan Documents and such failure, to the extent curable, is

not cured within thirty (30) days after written notice from Lender specifying the default or, if such breach cannot with due diligence be cured within such period, if Borrower shall fail within such thirty (30) day period to commence cure of the failure and thereafter diligently prosecute to completion such cure (which cure in any event shall occur within sixty (60) days after the default notice).

8.3 Failure to Obtain Lender's Consent to Transaction. Borrower engages in a sale, transfer or assignment, or uses Loan proceeds, in violation of the terms of the Note, the Trust Deed, or the Loan Documents, or changes the use of the Property or Project without Lender's prior written consent.

8.4 Failure to Comply. Borrower defaults under the Note, this Loan Agreement, the Trust Deed, or the Loan Documents and fails to cure the default within the applicable cure period, if any, set forth therein.

8.5 Failure to Pay General Debts When Due.

(a) Borrower or any guarantor of the Loan (i) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all or a substantial part of its property, (ii) admits in writing its inability to pay, or generally is not paying, its debts as they become due, (iii) makes a general assignment for the benefit of creditors, (iv) commences a voluntary action under the United States Bankruptcy Code (as now or hereafter in effect), (v) is adjudicated a bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, (vii) fails to controvert in a timely or appropriate manner, or acquiesces or consents in writing to, any petition filed against it, in an involuntary action under the United States Bankruptcy Code, or (viii) takes any action or consents to any action for the purpose of effecting any of the foregoing.

(b) (i) A proceeding or case is commenced against Borrower, without its consent, in any court of competent jurisdiction, seeking the liquidation, reorganization, dissolution, windup, or composition or readjustment of the debts of Borrower, (ii) a receiver, trustee, custodian, liquidator, or the like is appointed for Borrower or for all or a substantial part of its assets, or (iii) relief is granted to Borrower under any law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or (iv) an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for any period of sixty (60) days, or an order for relief against Borrower is entered in an involuntary case under the United States Bankruptcy Code.

8.6 Failure to Disclose Material Facts. Borrower fails to disclose any fact material to the making of any loan to Borrower, or upon discovery by Lender of any misrepresentation by, or on behalf of, or for the benefit of Borrower.

8.7 Default Under Other Loans. Borrower defaults under any other loan (including any construction, permanent, or bond financing) secured in whole or in part by the Property, including any loan secured by a Permitted Exception, and fails to cure such default within any applicable cure period set forth in the loan documents relating to such loan. If Borrower cures a default under any other loan, that cure shall constitute a cure under the Trust Deed, the Note, or the Loan Documents, provided Borrower is not in default of any other provision of the Trust Deed, the Note, or the Loan Documents.

8.8 **Discontinued Construction.** Construction on the Project is discontinued or prohibited for at least 30 consecutive days, or the Project is abandoned.

8.9 **Failure to Diligently Pursue the Project.** Borrower fails to diligently pursue the Project during the Construction Period. Borrower agrees to complete the Project by December 31, 2025.

9. RIGHTS AND REMEDIES ON DEFAULT

Upon the occurrence of an Event of Default and at any time thereafter, Trustee or Lender may, at its option, exercise any one or more of the following rights and remedies:

9.1 **Acceleration.** Lender may declare the entire remaining unpaid balance of principal and unpaid accrued interest and other charges payable by Borrower pursuant to the Note or any other Loan Document, to be immediately due and payable in full.

9.2 **Foreclosure.** Lender shall have the right to foreclose by notice and sale, or Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with applicable law. In any judicial foreclosure, Lender shall be entitled to obtain a deficiency judgment for any amount by which the amount of the obligations secured hereby exceeds the sale proceeds.

9.3 **Waiver of Rights.** Notwithstanding Section 9.2, Lender shall have the right, at its sole option, to waive its rights under the Trust Deed and pursue an independent action upon the Note. The Note, Trust Deed, and other Loan Documents are separate and distinct instruments separately or collectively enforceable in accordance with their terms.

9.4 **Rights and Remedies.** Lender shall have any other right or remedy provided in the Trust Deed, the Note, the Loan Documents, or any other instrument delivered by Borrower in connection therewith, or available at law, in equity, or otherwise in such order and manner as it may select.

9.5 **Uniform Commercial Code.** Lender shall have all rights and remedies under the Oregon Uniform Commercial Code, as amended from time to time. Lender shall give Borrower reasonable notice of the time and place of any public sale of any personal property or of the time after which any private sale or any other intended disposition of personal property collateral is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition.

9.6 **Exercising Rights and Remedies.** In exercising its rights and remedies, Lender may cause all or any part of the Property to be sold as a whole or in parcels, and certain portions of the Property may be sold without selling other portions. Lender may bid at any public sale on all or any portion of the Property. A waiver by either party of a breach of a provision of the Trust Deed shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. An election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and all remedies of Lender under the Trust Deed are cumulative and not exclusive. An election to make expenditures or take action to perform an obligation of Borrower shall not affect Lender's right to declare a default and exercise its remedies under the Trust Deed. Lender shall have any other right or remedy provided in the Note, the Loan Documents, or any other instrument delivered by Borrower in connection therewith, or any remedy available at law, in equity, or otherwise in such order and manner as it may elect.

9.7 **Foreclosure of Lessee's Rights - Subordination.** Lender shall have the right, at its option, to foreclose the Trust Deed subject to the rights of any lessee(s) of the Property. Lender's failure to foreclose against any lessee shall not be asserted as a claim against Lender or as a defense against any claim by Lender in any action or proceeding. Lender, at any time, may subordinate the Trust Deed to any or all of the lessees, except that Lender shall retain its priority claim to any condemnation or insurance proceeds.

9.8 **Repairs During Redemption.** In the event of a judicial foreclosure, the purchaser during any redemption period may make such repairs and alterations to the Property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring of the Property. Any sums so paid, together with interest from the date of the expenditure at the rate provided in the judgment shall be added to the amount required to be paid for redemption of the Property.

9.9 **Event of Foreclosure.** In the event of any judicial or nonjudicial foreclosure sale, Lender in its discretion may use a single notice covering both real estate and personal property, designate the order of sale, and may elect to sell the real estate and personal property as an integrated unit or separately. Any person permitted by law to do so may purchase at any sale.

9.10 **Proceeds of Sale.** Subject to the provisions of applicable law, the proceeds of any sale under the Trust Deed will be applied first to payment of costs and expenses, then to payment of security protection advances, then to payment of the other secured obligations (which includes any applicable prepayment premium or fee) in any order that Lender chooses, and then to any other person or persons who may establish to the satisfaction of Lender that they are legally entitled to it.

9.11 **Borrower's Waiver of Rights Upon Sale.** Borrower waives all rights to direct the order and/or combinations in which any of the collateral will be sold, and also any right to have any of the collateral marshaled upon any sale. Borrower acknowledges that there is no fiduciary relationship between Borrower and Lender.

9.12 **During Construction.**

(a) Lender shall have the right to take over and cause the Project to be completed and, for that purpose, make disbursements from any undisbursed Loan funds. Any contract entered into or indebtedness incurred on the exercise of such right may be exercised by Lender in the name of Borrower, and Lender is hereby irrevocably appointed attorney-in-fact (the appointment being coupled with an interest) to enter into the contract, incur such obligations, enforce contracts or loan agreements theretofore made by or on behalf of Borrower, and to do any and all things necessary or proper to complete the work of construction, including the signing of Borrower's name to such contracts and documents as may be deemed necessary by counsel for Lender. In no event shall Lender be required to use its own funds to complete the Project if undisbursed Loan funds are insufficient, but Lender may, at its option, advance such funds. Any funds so advanced shall be payable to Lender by Borrower on demand together with interest thereon at the Default Rate under the Note and shall be secured by the Trust Deed.

(b) Lender shall have the right to suspend or terminate its obligation to make further disbursement of Loan proceeds, consistent with this Agreement.

9.14 **Interest on Default.** Upon the occurrence of any Event of Default, interest under the Note shall accrue on the unpaid principal balance from the date of the Event of Default, or if the Event of Default is a payment default, from the date the first unpaid payment was due, at a rate (the “**Default Rate**”) equal to twelve percent (12%) per annum until paid in full. Lender may charge interest at the Default Rate starting when Lender gives notice of the default to Borrower and continuing until the default is cured or the Note is paid in full or discharged through foreclosure against the collateral and applicable redemption rights have expired.

9.15 **Rights and Remedies Cumulative.** All rights and remedies described in Section 9 are nonexclusive, cumulative and in addition to any other remedy Lender may have by agreement, at law, or in equity. Partial exercise of any right or remedy shall not limit or restrict Lender’s subsequent exercise of such right or remedy nor shall it restrict Lender’s contemporaneous or subsequent exercise of any other right or remedy.

9.16 **No Waiver.** No failure or delay of Lender in exercising any right hereunder shall operate as a waiver of that right or any other right. No modification or waiver of any provision of the Trust Deed or any other Loan Document shall be effective unless in writing, and signed by Lender, and then only in specific instance and for the purpose given. No notice or demand on Borrower shall entitle Borrower to any other notice or demand in other similar circumstances.

9.17 **Payment of Costs of Collection.** In the event of a default or commencement of litigation to enforce or construe any term of the Trust Deed, the Note, or any other Loan Document, the losing party will pay to the prevailing party such amounts as shall be sufficient to cover the cost and expense of collection or enforcement, including, without limitation, reasonable attorney fees and costs prior to and at any arbitration proceeding or at trial, on appeal, or in any bankruptcy proceeding.

10. MISCELLANEOUS

10.1 **Nonrecourse Provision.** The obligations under the Note, including the obligations secured by the Trust Deed, are without recourse to Borrower, and any of its partners or members.

10.2 **Counterparts.** This Loan Agreement may be executed in any number of counterparts, and any single counterpart or set of counterparts signed, in either case, by all the parties hereto shall constitute a full and original instrument, but all of which shall together constitute one and the same instrument.

10.3 **Survival.** All agreements, representations, and warranties shall survive the execution and delivery of this Loan Agreement, any investigation at any time made by Lender or on its behalf, the making of the Loan, and the delivery of the Trust Deed and Note.

10.4 **Notice.** Any notice required or permitted under this Loan Agreement shall be in writing and shall be deemed effective (a) when actually delivered in person, (b) one business day after deposit with a commercial courier service for "next day" delivery, (c) two business days after having been deposited in the United States mail as certified or registered mail, or (d) when transmitted by facsimile (answer back or receipt confirmed), addressed to the parties as follows:

If to Borrower: CPAH Plambeck Limited Partnership
c/o Community Partners for Affordable Housing
P. O. Box 23206
Tigard, OR 97281-3206

cc: Wincopin Circle LLLP
c/o Enterprise Community Asset Management, Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, Maryland 21044
Telephone: (410) 964-0552
Facsimile: (410) 772-2630
Attention: Asset Management

With a copy to:
Kenneth S. Gross, Esq.
Gallagher Evelius & Jones LLP
218 North Charles Street, Suite 400
Baltimore, Maryland 21201
Telephone: (410) 727-7702
Facsimile: (410) 468-2786

If to Lender: City of Tualatin
Attn: City Manager
18880 Martinazzi Ave.
Tualatin, OR 97062-7092

10.5 Successors and Assigns. This Loan Agreement shall be binding upon and shall inure to the benefit of the parties and their respective permitted successors and assigns. Notwithstanding the foregoing, in the event the Senior Lender acquires title to the Property or Project through foreclosure, or deed in lieu of foreclosure, neither the Senior Lender nor any subsequent purchaser of the Property or Project following such foreclosure, or deed in lieu of foreclosure, shall be deemed a “successor or assign” of Borrower.

10.6 Governing Law. This Loan Agreement and the other Loan Documents shall be governed by and construed under Oregon law, without respect to conflict of laws principles.

10.7 Assignment. Borrower may not assign this Loan Agreement without the prior written consent of Lender, which Lender may withhold in its sole discretion.

10.8 Modification; Entire Agreement Loan Agreement Controlling; Headings. This Loan Agreement may not be modified or amended except by an instrument in writing signed by Borrower and Lender. This Loan Agreement, taken together with the other Loan Documents and the Commitment Letter, reflects and sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating to such subject

matter. The headings in this Loan Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms hereof.

10.9 **Validity; Severability.** If any provision of this Loan Agreement is held to be invalid, such event shall not affect, in any respect whatsoever, the validity of the remainder of this Loan Agreement, and the remainder shall be construed without the invalid provision so as to carry out the intent of the parties to the extent possible without the invalid provision.

10.10 **Exhibits.** Any exhibits attached to this Loan Agreement and referred to herein are incorporated in this Loan Agreement as if they were fully set forth in the text hereof.

10.11 **Time of Essence.** Time is of the essence of this Loan Agreement and each of the Loan Documents.

10.12 **No Third-Party Beneficiaries.** This Agreement does not confer and is not intended to confer any rights, obligations or remedies upon any person other than Lender and Borrower.

10.13 **Lender's Consent.** Throughout the Loan Documents, a reference to Lender's (or City's) ability to consent to an act or request means at Lender's reasonable discretion.

10.14 **Partner Cure.** Lender agrees to accept a cure of any event of default by any partner of Borrower as if it were offered by Grantor itself.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be executed by their duly authorized representatives as of the date first above written.

BORROWER:

CPAH PLAMBECK LIMITED PARTNERSHIP, an Oregon limited partnership

By: CPAH Plambeck GP, LLC, its general partner

By: Community Partners for Affordable Housing,
its sole member

By: _____
Rachael Duke, Executive Director

LENDER:

CITY OF TUALATIN, a municipal corporation of the State of Oregon,

By: _____
**Sherilyn Lombos, City Manager,
City of TUALATIN**

Date: _____

List of Exhibits: On File with the City of Tualatin

Exhibit A Technical Memorandum

Exhibit B Promissory Note

Exhibit C Trust Deed

DRAFT